

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

In re:	:	Case No. 5:22-bk-00772-MJC
	:	
Sean M. Bing,	:	Chapter 13
	:	
Debtor.	:	

Debtor's Motion to Approve Carol Bing as Next Friend

Debtor Sean M. Bing, by his attorney and through his next friend, Carol Bing, hereby asks this Court for an order approving Carol Bing as next friend in this case. In support of this motion, Mr. Bing states as follows:

1. On April 10, 2020, Mr. Bing executed a power of attorney naming Ms. Bing attorney-in-fact through December 31, 2023. Exhibit A.

2. This case was filed under chapter 13 on April 26, 2022. The petition was executed by Ms. Bing as Mr. Bing's attorney-in-fact.

3. Mr. Bing is and has been incarcerated in Ohio since October 18, 2017. Exhibit B. Mr. Bing's incarceration makes it difficult for him to communicate with people outside of prison, which makes it difficult for him to fulfill his duties as a debtor in this case.

4. Fed. R. Bankr. P. 1004.1 allows a next friend to file a petition on a debtor's behalf. Although R. 1004.1 is specific to infant or incompetent persons, it has long been acceptable for a next friend to appear in court on behalf of a prisoner. *Whitmore v. Arkansas*, 495 U.S. 149, 161-62 (1990). When approving a next friend, the Court "has substantial discretion to decide who will act in the [litigant's] best interests." *Gardner v. Parson*, 874 F.2d 131, 139 (3d Cir. 1989).

5. Because Mr. Bing's incarceration makes it difficult for him to fulfill his duties as a debtor, it is necessary for this Court to approve Ms. Bing as next friend so that this bankruptcy case

may proceed in an appropriately expeditious manner. Ms. Bing's approval as next friend should be *nunc pro tunc* to April 26, 2022, the date the case was filed.

6. Although the power of attorney does not give Ms. Bing express authorization to file a bankruptcy case for Mr. Bing, it does give her broad authority to act on Mr. Bing's behalf in any matter, including settling claims, hiring attorneys, signing governmental documents, and providing for the support of Mr. Bing's minor children. Exhibit A pmbl. ("My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal rights and powers . . ."); Exhibit A ¶ 5 ("[My agent may] [t]ake any and all legal steps necessary to . . . settle any claim made against me . . ."); Exhibit A ¶ 9 ("[My agent may] [e]mploy . . . attorneys . . ."); Exhibit A ¶ 11 ("[My agent may] [p]repare, sign, and file documents with any governmental body or agency . . ."); Exhibit A ¶ 2 ("[My agent may] [p]rovide for the support and protection . . . of any minor child I have a duty to support or have established a pattern of prior support[ing], including, without limitation, provision for . . . housing . . .").

7. Mr. Bing's bankruptcy estate is simple; he has few assets or liabilities aside from his home. The purpose of this bankruptcy case is to prevent foreclosure of his home, where Ms. Bing lives with Mr. Bing's minor children. Ms. Bing has knowledge and understanding of Mr. Bing's financial affairs, which makes her an appropriate person to act as next friend. Because she is caring for Mr. Bing's children and living in his home, she can be expected to act in Mr. Bing's best interests. Exhibit C.

NOW, THEREFORE, Mr. Bing asks this Court to: (a) approve Carol Bing as next friend *nunc pro tunc* to the date this case was filed, (b) grant authority to take all actions required by him

as debtor during the pendency of the case to Carol Bing, including authority to file the voluntary petition and testify on his behalf at the meeting of creditors, and (c) grant such other relief as may be necessary and proper under the law. A proposed form of order is attached.

Dated: July 13, 2022

CIBIK LAW, P.C.
Counsel for Debtor

By: /s/ Michael I. Assad
Michael I. Assad (#330937)
1500 Walnut Street, Suite 900
Philadelphia, PA 19102
215-735-1060
mail@cibiklaw.com